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10/743,585	12/22/2003	Brandon A. Bartling	SP-1743.1 US	9712

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EXAMINER
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CANTELMO, GREGG

ART UNIT	PAPER NUMBER
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1795

MAIL DATE	DELIVERY MODE
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10/10/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/743,585

**Applicant(s)**

BARTLING ET AL.

**Examiner**

Gregg Cantelmo

**Art Unit**

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/17/07 & 8/2/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,6,8-20,22-29,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6,8-20,22-29 and 31 is/are rejected.
- 7) ☒ Claim(s) 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 2, 2007 has been entered.

***Response to Amendment***

2. In response to the amendment request for continued examination received August 2, 2007:

- a. The arguments and affidavits filed July 17, 2007 have been entered;
- b. No claim amendments were filed in either the response filed July 17, 2007 or the request for continued examination received August 2, 2007. Action on the merits is applied to the last claim filing, received March 5, 2007;
- c. Claims 1-3, 5, 6, 8-20, 22-24, 26-29 and 31-32 are pending;
- d. The previous 112 rejections have been withdrawn as set forth in the previous office action;
- e. The prior art rejections are withdrawn. However the claimed subject matter is not deemed to be allowable based on the new grounds of rejection set forth herein.

***Response to Arguments regarding 112 2<sup>nd</sup> paragraph rejections***

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3. Applicant's arguments in reference to the 112 2<sup>nd</sup> paragraph rejection of claims 3, 20 and 24 are unclear. Applicant states that Claims 3, 20 and 24 were rejected under 112 2<sup>nd</sup> paragraph in the office action dated October 26, 2006. Applicant indicates that this interpretation was repeated in the Office action dated March 19, 2007. However a review of the office action dated March 19, 2007 indicates that the 112 rejections set forth in the previous office action (October 26, 2006) have been overcome. Applicant acknowledges this in the response received July 17, 2007 (see page 7) but it is apparent that by indicating that both the rejections have been withdrawn and maintained in the office action dated March 19 2007 is unclear of the status of claims 3, 20 and 24 in accordance with 112 2<sup>nd</sup> paragraph statutes. As should be apparent from the previous office action, but for purposes of clarity, the Examiner restates that the 112 2<sup>nd</sup> paragraph rejection of claims 3, 20 and 24 were overcome and have been withdrawn.

#### ***Claim Objections***

4. Claims 1, 8 and 29 objected to because of the following informalities: the lower range of "25,000" should include the units of N/m immediately after this value (see claim 19 which includes units immediately after each of the bound of the claimed range. Claims 8 and 29 are objected to for similar reasons applied to the claimed OCV range. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-3, 6-10, 12, 14-17, 19-20, 22-24, 26, 29 and 31 are rejected under 35 U.S.C. 103(a) as obvious over Oltman in view of WO '224.

Oltman discloses a metal-air cell (title) comprising: at least one air entry port along an exterior surface of the cell (col. 4, ll. 35-45), and a tab system comprising a biaxially-oriented polypropylene paper (col. 4, ll. 15-20) and an acrylic adhesive disposed between the paper and the exterior surface of the metal air cell (col. 4, ll. 23-27). With respect to the claimed loss stiffness, the polymer layer of Oltman is a biaxially-oriented polypropylene paper applied via an acrylic adhesive. The instant

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application itself teaches that the polymer layer is also a biaxially oriented polypropylene layer applied via an acrylic adhesive (see Example 1). Since the prior art paper/adhesive combination appears to be substantially identical to at least some of those exemplified in the instant application, there is a reasonable expectation that the prior art paper of Oltman exhibits the same loss stiffness (claims 1, 5, 19, 22-23 and 29) peel strength (claims 2 and 21), oxygen permeability (claims 1, 19, 23 and 29), and average burst pressure (claim 19). The open-circuit voltage (OCV) of Lot-A of Oltman, identified as being the invention of Oltman, is between 1.203 and 1.263 (Table II as applied to claims 29).

Where applicant claims a composition in terms of a function, property or characteristic and the composition of the prior art is the same as that of the claim but the function is not explicitly disclosed by the reference, the examiner may make a rejection under both 35 U.S.C. 102 and 103, expressed as a 102/103 rejection.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

In the case of the instant application the basis for expectation of inherency is based on the following: the polymer layer of Oltman is a biaxially-oriented

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polypropylene paper applied via an acrylic adhesive. The instant application itself teaches that the polymer layer is also a biaxially oriented polypropylene layer applied via an acrylic adhesive (see Example 1). Since the prior art paper/adhesive combination appears to be substantially identical to at least some of those exemplified in the instant application, there is a reasonable expectation that the prior art paper of Oltman exhibits the same loss stiffness (claims 1, 5, 19, 22, 23 and 29) peel strength (claims 2 and 21), oxygen permeability (claims 1, 19, 23 and 29), and average burst pressure (claim 19).

The Examiner requires applicant to provide that that the prior art products do not necessarily or inherently possess the characteristics of his [or her] claimed product.

Whether the rejection is based on inherency' under 35 U.S.C. 102, on prima facie obviousness' under 35 U.S.C. 103, jointly or alternatively, the burden of proof is the same...[footnote omitted]." The burden of proof is similar to that required with respect to product-by-process claims. In re Fitzgerald, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980) (quoting In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977)).

The cell is a button-type cell, such shapes being known in the art as a cylindrical button shape (col. 4, ll. 5-7 as applied to claims 9 and 10). Button-type cells include curved side surfaces as readily apparent to one of ordinary skill in the art. Claims 3, 20 and 24 have been interpreted in light of the specification such that the curved surface as claimed is not the surface which includes the air entry ports but rather the sidewall configuration of the cell (see Figs. 1 and 2).

The open-circuit voltage (OCV) of Lot-A of Oltman, identified as being the invention of Oltman, is between 1.203 and 1.263 (Table II as applied to claims 8).

The first polymer layer, discussed above is a biaxially oriented polypropylene layer (as applied to claim 12).

The first polymer layer has a thickness in the range of 2.7 mils to 3.7 mils, and preferably 3.2 mils. This is equivalent to 0.0027" to 0.0037", and preferably 0.0032" (col. 4, ll. 15-22 as applied to claim 14).

The seal tab is described as being cleanly removed (abstract) and thus would have no visible residue remaining on the cell (as applied to claim 15).

As discussed above, the adhesive is an acrylic adhesive (as applied to claim 16).

The tab system comprises a second polymer layer such as a polyester (col. 4, ll. 30-35 as applied to claim 17) or in the alternative, given that the polypropylene layer is a three-ply paper, includes plural biaxially oriented polypropylene layers (abstract as applied to claim 17).

The issue herein pertains to the limitation regarding the absence of mercury in the cell (claims 1, 19, 23 and 29).

The differences between Oltman and are that Oltman does not teach of the cell having zero added mercury (claims 1, 19, 23 and 29), comprising an active material that comprises zinc and an electrolyte that comprises KOH (claim 6) or of the cell comprising zero added mercury (claims 1, 19, 23 and 29).



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WO '224 is drawn to zinc-air cells which employ a zinc active material and an electrolyte comprising KOH (page 8, ll. 11-24 as applied to claim 6). The cell is also a zero mercury added cell (page 2, ll. 27-29).

Therefore it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify the teachings of Oltman by selecting the zinc active material and KOH electrolyte, since such materials are typical electrochemical elements in metal-air cells and, in particular, zinc air cells. The selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). MPEP § 2144.07.

It would have additionally been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify the teachings of Oltman by designing the cell to have zero added mercury since mercury is hazardous to the environment and to the health of humans and animals and would have generated a battery which is compliant with the increased demand by the public and federal, state, and local governments to substantially decrease or eliminate mercury in all electrochemical cells, including button-type cells.

### ***Response to Arguments***

6. The declaration under 37 CFR 1.132 filed July 17, 2007 is sufficient to overcome the rejections.

Regarding the zero mercury limitation:

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The previous rejection stated that Oltman makes no mention of the presence of mercury in the product and thus is not expected to have any mercury therein (as applied to claims 1, 19, 23 and 29).

The declaration of Robert B. Dopp states that the metal-air cell disclosed in the Oltman reference (U.S. Patent No. 4,649,090) contained added mercury. Dopp's statement is persuasive since Dopp is one of the inventors of U.S. Patent No. 4,649,090 and his statement regarding the presence of mercury in the Oltman reference is held to be true.

Thus the cells of Oltman are not held to be mercury-free.

However the concept of designing mercury-free metal air cells is not held to be a novel contribution to the art as reasoned below and in light of the teachings of WO '224.

Thus while the declaration shows that the primary reference comprised mercury, the declaration does not overcome the combination of teachings, notably the motivation for designing mercury-free cells as taught by WO '224.

WO '224 is drawn to zinc-air cells which employ a zinc active material and an electrolyte comprising KOH (page 8, ll. 11-24 as applied to claim 6). The cell is also a zero mercury added cell (page 2, ll. 27-29).

Therefore it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify the teachings of Oltman by selecting the zinc active material and KOH electrolyte, since such materials are typical electrochemical elements in metal-air cells and, in particular, zinc air cells. The selection of a known material based on its suitability for its intended use supported a prima facie obviousness

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determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). MPEP § 2144.07.

It would have additionally been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify the teachings of Oltman by designing the cell to have zero added mercury since mercury is hazardous to the environment and to the health of humans and animals and would have generated a battery which is compliant with the increased demand by the public and federal, state, and local governments to substantially decrease or eliminate mercury in all electrochemical cells, including button-type cells.

Regarding the claimed properties of the tab system:

The previous rejection took the position that the claimed loss stiffness, average burst pressure, and oxygen permeability are inherent to the tab system of Oltman.

Where applicant claims a composition in terms of a function, property or characteristic and the composition of the prior art is the same as that of the claim but the function is not explicitly disclosed by the reference, the examiner may make a rejection under both 35 U.S.C. 102 and 103, expressed as a 102/103 rejection.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

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"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

In the case of the instant application the basis for expectation of inherency is based on the following: the polymer layer of Oltman is a biaxially-oriented polypropylene paper applied via an acrylic adhesive. The instant application itself teaches that the polymer layer is also a biaxially oriented polypropylene layer applied via an acrylic adhesive (see Example 1). Since the prior art paper/adhesive combination appears to be substantially identical to at least some of those exemplified in the instant application, there is a reasonable expectation that the prior art paper of Oltman exhibits the same loss stiffness (claims 1, 5, 19, 22, 23 and 29) peel strength (claims 2 and 21); oxygen permeability (claims 1, 19, 23 and 29), and average burst pressure (claim 19).

The Examiner requires applicant to provide that that the prior art products do not necessarily or inherently possess the characteristics of his [or her] claimed product.

Whether the rejection is based on inherency under 35 U.S.C. 102, on prima facie obviousness' under 35 U.S.C. 103, jointly or alternatively, the burden of proof is the same...[footnote omitted]." The burden of proof is similar to that required with respect to product-by-process claims. In re Fitzgerald, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980) (quoting In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977)).

The declaration of Brandon A. Bartling is not persuasive since it admittedly does not compare the actual cells of the Oltman reference but instead makes a comparison between the instant invention and a supposedly similar Rayovac brand of batteries. Furthermore, while the declaration shows that the Rayovac tab system does not exhibit the claimed properties it cannot be held to convincingly show that the tab system of Oltman does not exhibit these same properties since the overlamine layers in Oltman and Rayovac are not the same and the declaration fails to reason how such differences would still result in a tab system which does not meet the characteristics of the claims. Since the declaration does not provide clear and convincing evidence that the tab system of Oltman does not exhibit the claimed properties, and since the Examiner has set forth a reasonable rationale explaining why these properties are expectedly present in the biaxially oriented tab/adhesive system of Oltman, the rejection is maintained.

Furthermore the declaration fails to provide clear evidence regarding the invention, as claimed. The comparisons shown are not commensurate in scope with the claimed tab system nor do the claims clearly define the tab system. Thus while the overlamine layers might be different, these layers do not necessarily have to be a component of the "tab system" as claimed and regarding the face stock layer and adhesives of the instant application and Oltman, these are identical and thus are expected to exhibit identical properties.

Applicant additionally argues that further evidence of the nonobviousness of the claimed invention is the fact that the problems solved by the invention and its source are not recognized by Oltman or WO '224.

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This argument is not persuasive for the following reasons:

1) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a level of preventing premature cell activation) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993); and

2) In response to applicant's argument that the problems solved by the invention and its source are not recognized by Oltman or WO '224, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

### ***Claim Rejections - 35 USC § 103***

7. Claims 18 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oltman in view of WO '224.

The teachings of Oltman in view of WO '224 have been discussed above and are incorporated herein.

The seal tab paper is a three-ply biaxially-oriented polypropylene material and thus is held to include first and second ply biaxially-oriented polypropylene layers (as applied to claims 18 and 28).

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With respect to the tensile stress ratio being from 1:3 to 3:1, while Oltman does not teach this ratio, it is held that the biaxially oriented polypropylene layers exhibit inherent machine direction stress and transverse direction stress which, since not disclosed as being comparatively different between the two directions, is expectant to exhibit at least a 1:1 ratio. If not, then in the absence of a teaching of a varied ratio, one of ordinary skill in the art would first consider biaxially orienting the film in each direction with the same amount of stress in both the machine direction and transverse direction.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

In the case of the instant application the basis for expectation of inherency is based on the following: the polymer layer of Oltman is a biaxially-oriented polypropylene paper applied via an acrylic adhesive. The instant application itself teaches that the polymer layer is also a biaxially oriented polypropylene layer applied via an acrylic adhesive (see Example 1). Since the prior art paper/adhesive combination appears to be substantially identical to at least some of those exemplified in the instant application, and since there is no explicit teaching of varying the stress between the transverse direction and machine direction there is a reasonable

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expectation that the prior art paper of Oltman exhibits at least a 1:1 tensile stress property.

The Examiner requires applicant to provide that that the prior art products do not necessarily or inherently possess the characteristics of his [or her] claimed product.

Whether the rejection is based on inherency' under 35 U.S.C. 102, on prima facie obviousness' under 35 U.S.C. 103, jointly or alternatively, the burden of proof is the same...[footnote omitted]." The burden of proof is similar to that required with respect to product-by-process claims. In re Fitzgerald, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980) (quoting In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977)).

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Oltman in view of WO '224 further in view of U.S. Patent No. 5,328,778 (Woodruff) or U.S. Patent No. 6,265,102 (Shrim).

The teachings of Oltman in view of WO '224 have been discussed above and are incorporated herein.

The difference between claims 3, 20 and 24 and Oltman is that Oltman does not teach of the cell being a prismatic cell.

As discussed above, Oltman teaches that while button cells are exemplified, the invention of Oltman (the seal tab) can be used in conjunction with all types of metal-air cells (col. 4, ll. 3-7).

Prismatic metal-air cells are a well known alternative configuration for a metal-air battery as shown by Woodruff (Fig. 1) or Shrim (Fig. 7).



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Therefore it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify the teachings of Oltman to alter the shape to any conventional battery shape for metal air cells, such as the prismatic configuration as shown by Woodruff or Shrim since it would have provided for metal-air cell designs for particular electronic devices.

***Allowable Subject Matter***

9. Claim 32 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter: upon further consideration neither Oltman nor the remaining prior art of record appear to reasonably teach or suggest the metal-air cell of claim 29 further including first and second polypropylene polymer layers, both of which are biaxially oriented as recited in claim 29 and wherein a second adhesive is provided between the two polymer layers.

While Oltman teaches of a 3-ply biaxially oriented polypropylene layer, with a single adhesive layer disposed in the tab. U.S. patent No. 6,329,095 (Farnworth) does disclose of a tab system having first and second polymer layers and an adhesive between the polymer layers however these polymers are not biaxially stretched polypropylene. None of the remaining prior art of record appears to reasonably teach or suggest the combination of claim 29. Thus claim 29 appears novel over the prior art of record.

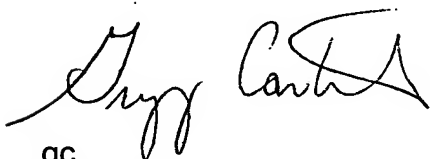
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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregg Cantelmo whose telephone number is 571-272-1283. The examiner can normally be reached on Monday to Thursday, 8:30-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



gc

October 3, 2007

Gregg Cantelmo  
Primary Examiner  
Art Unit 1795